



SAN FRANCISCO DISTRICT  
**PUBLIC NOTICE**

Regulatory Branch  
333 Market Street  
San Francisco, CA 94105-2197

NUMBER: 28416S      DATE: March 5, 2004  
RESPONSE REQUIRED BY: April 5, 2004

PERMIT MANAGER: Bob Quebedeaux PHONE: 415-977-8446

Email: Bob.D.Quebedeaux@spd02.usace.army.mil

**1. INTRODUCTION:** The Port of Oakland (contact: Marucia Britto, Port of Oakland Associate Environmental Planner, 530 Water Street, Oakland, CA 94607, (510) 627-1104) has applied for a U.S. Army, Corps of Engineers (Corps) permit to commence the Wharf And Embankment Strengthening Program (WESP) and Berth Deepening at Berths 35 and 37. This application is being processed pursuant to the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

**2. PROPOSED PROJECT:**

**Project Site:** The project will be located at Berths 35 and 37 in the Ben E. Nutter Marine Container Terminal, 5190 7<sup>th</sup> Street, Oakland, Alameda County, California 94607 (see attached Figures 1 and 2). Recent investigation by Port divers at Berths 35 and 37 determined about 40% of the A-row piles (front row of piles supporting the waterside crane rail) are cracked at the mud line.

**Project Description:** As shown in the attached Figures 2 and 3, the applicant plans to demolish and replace all A-row piles at Berths 35 and 37 and deepen the berths. Specific project details include replacing the 375 existing 16-inch square concrete A-row piles with approximately 250 new 24-inch square concrete piles. The wharf edge will be reconstructed after the piles are installed, however no bay fill is proposed beyond the installation of A-row piles. The project also proposes deepening the berths

from -42 feet MLLW (mean lower low water) to -50 feet MLLW. Once deepened, a steel sheet pile wall at the toe of the embankment slopes will be installed to prevent erosion and stabilize the embankment.

**Purpose and Need:** The basic purpose of this project is to perform structural modification to the wharf, deepen the berths and stabilize the embankment. The overall purpose of this project is to provide Berth 35 and 37 wharfs with adequate structural performance in case of a seismic event and to deepen the berths to modernize the Port's maritime facilities and accommodate larger (post-Panamax) vessels, which constitute the current fleet of vessels used by shipping companies.

**Impact:** The applicant plans to remove up to 97,000 cubic yards (cy) of sediment. Approximately 86,000 cy of suitable dredged material will be reused in the Middle Harbor Enhancement Area. The remaining 11,000 cy of unsuitable material will be re-handled at Berth 10 and off-hauled or re-used as fill for construction at the Port.

**Mitigation:** The applicant has proposed to avoid impact to salmonids, use debris containment boom around all demolition and excavation activities and to take measures to dampen noise impacts to aquatic resources to a level less than or equal to 180dB (peak) as measured 10 meters from the pile driving activity, and approximately 3 meters below the water surface. In addition, a qualified observer will be present on-site during all dredging operations near potential herring spawning areas between December

1 and March 1. If spawning is observed within 200 meters of the work site, all dredging related activities will be stopped in the area for 2 weeks.

### **3. COMPLIANCE WITH VARIOUS FEDERAL LAWS:**

**National Environmental Policy Act of 1969 (NEPA):** The Corps will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4371 et. seq.), the Council on Environmental Quality's Regulations, 40 CFR 1500-1508, and Corps' Regulations, 33 CFR 230 and 325, Appendix B. Unless otherwise stated, the Environmental Assessment will describe only the impacts (direct, indirect, and cumulative) resulting from activities within the Corps' jurisdiction. The documents used in the preparation of the Environmental Assessment will be on file with the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197.

**Endangered Species Act of 1973 (ESA):** Section 7 of the Endangered Species Act requires formal consultation with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) if a Corps permitted project may adversely affect any Federally listed threatened or endangered species or its designated critical habitat. Species that may occur in the project area include the California brown pelican and the California least tern, however the project area is not designated critical habitat for these species. In addition, Sacramento River winter-run and Central Valley spring-run Chinook salmon, and Central California Coast and Central Valley steelhead are listed as threatened or endangered in central San Francisco Bay. The project area is not critical habitat for these species but may or may not be located in any migratory path. Past sampling activities in the project area have not captured any of the listed species.

**Magnuson-Stevens Fisheries Conservation and Management Act:** NMFS and several interagency fisheries councils have designated specific water bodies as Essential Fish Habitat (EFH) in accordance with the Magnuson-Stevens Fisheries Conservation and Management Act. Coordination with the NMFS in regard to EFH will be initiated concurrently with the ESA consultation, if necessary.

### **Clean Water Act of 1972 (CWA):**

**a. Water Quality:** Under Section 401 of the Clean Water Act (33 U.S.C. Section 1341), an applicant for a Corps permit must first obtain a State water quality certification before a Corps permit may be issued. The applicant has provided the Corps with evidence that he has submitted a valid request for State water quality certification to the San Francisco Bay Regional Water Quality Control Board. No Corps permit will be granted until the applicant obtains the required water quality certification. The Corps may assume a waiver of water quality certification if the State fails or refuses to act on a valid request for certification within 60 days after the receipt of a valid request, unless the District Engineer determines a shorter or longer period is reasonable for the State to act.

Those parties concerned with any water quality issues that may be associated with this project should write to the Executive Officer, California Regional Water Quality Control Board, San Francisco Bay Region, 1515 Clay Street, Suite 1400, Oakland, California 94612 by the close of the comment period of this Public Notice.

**b. Alternatives:** Evaluation of this proposed activity's impact includes application of the guidelines promulgated by the Administrator of the Environmental Protection Agency under Section 404(b)(1) of the Clean Water Act (33 U.S.C. Section 1344(b)). The applicant has submitted an Analysis of

Alternatives for the project and it will be reviewed for compliance with the guidelines. The applicant states that there is no practicable alternative for his project. An evaluation has been made by this office under the guidelines and it was determined that the proposed project is water dependent.

**Coastal Zone Management Act of 1972 (CZMA):** Section 307 of the Coastal Zone Management Act requires the applicant to certify that the proposed project will comply with the State's Coastal Zone Management Program, if applicable. No Corps permit will be issued until the State has concurred with the applicant's certification. Coastal development issues should be directed to the San Francisco Bay Conservation and Development Commission (BCDC), 50 California Street, Suite 2600, San Francisco, California 94111.

**National Historic Preservation Act of 1966 (NHPA):** Based on a review of survey data on file with various City, State and Federal agencies, no historic or archeological resources are known to occur in the project vicinity. If unrecorded resources are discovered during construction of the project, operations will be suspended until the Corps completes consultation with the State Historic Preservation Office (SHPO) in accordance with Section 106 of the National Historic Preservation Act.

**4. PUBLIC INTEREST EVALUATION:** The decision whether to issue a permit will be based on an evaluation of the probable impact, including cumulative impact, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposed activity must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered, including its cumulative effects. Among those factors are: conservation,

economics, aesthetics, general environmental concerns, wetlands, historical properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

**5. CONSIDERATION OF COMMENTS:** The Corps of Engineers is soliciting comments from the public, Federal, State and local agencies and officials, Indian Tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps to determine whether to issue, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest in the proposed activity.

**6. SUBMISSION OF COMMENTS:** Interested parties may submit, in writing, any comments concerning this activity. Comments should include the applicant's name and the number and the date of this Public Notice, and should be forwarded so as to reach this office within the comment period specified on Page 1. Comments should be sent to the U.S. Army Corps of Engineers, San Francisco District, Regulatory Branch, 333 Market Street, San Francisco, California 94105-2197. It is the Corps' policy to forward any such comments that include objections to the applicant for resolution or rebuttal. Any person may also request, in writing, within the comment period of this Public Notice that a public

hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

Additional details may be obtained by contacting the applicant whose name and address are indicated in the first paragraph of this Public Notice or by contacting Bob Quebedeaux of our office at telephone 415-977-8446 or E-mail: Bob.D.Quebedeaux@spd02.usace.army.mil. Details on any changes of a minor nature, which are made in the final permit action, will be provided upon request.